A

LETTER

Concerning the

DISABLING CLAUSES

Lately offered to

The House of Commons,

FOR REGULATING

CORPORATIONS.

LONDON,

To be Sold by *Randal Taylor*, near Stationers-Hall. 1690.

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A

LETTER

CONCERNING

The Diſabling Clauſes, lately offered to the Houſe of Commons, for Regulating Corporations.

SIR,

I Have procured Copies of the Clauſes you deſired, which are the incloſed; but I wiſh you had omitted thoſe Commands, whereby I am obliged to give you an Account of the Conduct, and my Senſe touching the Deſign and Conſequence of them. For I cannot, without great reluctance, undertake to reſolve the Myſtery of a Project, formed by Gentlemen of the chief Rank in Parliament Buſineſs. But I muſt not diſpute your Injunctions, which, without the Parliament's Help, are Laws to me, therefore I ſubmit.

The Deſign was induſtriouſly concealed, till after the Corporation Bill had been brought in, debated, both in the Houſe, and at the Committee, and reported; and upon ———————— when the Houſe was poſſeſs'd of the Report from the Committee, theſe Clauſes, ready

drawn in the Form you ſee, were firſt ſpoke of, and offered to be made part of the Bill. This was ſoon after the Chriſtmas-Receſs, when the Houſe was thin; for had the matter been inſerted in the Bill, or brought in at the Committee, the Alarm had been taken, and few Members would have failed to attend it. For thoſe who were jealous of Stratagems, to influence future Elections, expected to hear of them in the Tranſaction of that Bill; but finding it ſettled in a harmleſs Reſtitution to the State of 1675, (which was generally approved) without any contrivance extraordinary, began to think all Deſigns of that nature laid aſide; and therefore took the opportunity of the Holy-Days, to viſit their Country Affairs; and few were returned when this happened; however great Oppoſition was made, and many Qualifications and Amendments offered, one particularly was, That the old Regulators might be diſabled alſo for Company. But all were rejected, and the Votes paſt for admitting the Clauſes, and ingroſſing the Bill accordingly; which was ſoon ready, and called for.

You obſerve here a well tempered Craft; for if the Clauſes had come in upon reading the ingroſſed Bill, by way of *Rider*, they had paſſed, *uno flatu*, without a ſecond oppoſition; but then the ſurpriſe had been too groſs, and eminent, and might have hurt the buſineſs in the Lords Houſe. And yet an opportunity was found, which might perfect the Work in two days, without notice or jealouſie in the Oppoſers, and the ſurpriſe leſs, without danger of miſcarrying.

The ingroſſed Bill was read upon Saturday after, and upon a motion for time, the Conſideration of it was put off till Friday following, near a Week; by which time moſt of the abſent Members were expected; and this was done with the Concurrence of the Promoters, which

which was thought a wonderful Paſs; ſome ſay the reaſon was, that his Majeſty was pleaſed to expreſs his diſlike of the thing; Whereupon it was affirmed, as a Teſt of its Utility, that the Majority of the Houſe were for it; which ſhou'd be demonſtrated by a Trial at an indifferent time. And Mr. ——— declared, if it fail'd he wou'd never come into that Houſe more.

It ſeems one days Succeſs had created a great Confidence, and produced this Undertaking in point of Party; And to ſhew of what Import the Point was I muſt add, that upon *Friday*, —— when the Debate came on, the Houſe was conſiderably full and it laſted twelve hours, they divided ſeveral times, and there was not ſix Members abſent in any one Diviſion. The Votes paſs'd for rejecting the Clauſes; but if the contrary had ſucceeded, then (if what is confidently ſaid may be believed) the Common-Council of *London* would have been preſs'd to Addreſs to the King for diſſolving this and calling a New Parliament. And then the fruits of all this Art, and pains had ſoon fallen into Enjoyment.

We hear alſo that he, who brought in the chief Clauſe, was unwilling to venture it upon the plain Rigour of that, which was Voted the other day; and began the Debate with another more Moderate, as it was ſtyled, but many perceiv'd it to be ſo in ſhew more than ſubſtance; and thereupon it was rejected upon the bare opening, without Reading. Theſe were the publick ſteps of the Buſineſs; but before I proceed to diſſect the Clauſes, and ſhew the Admirable Juſtice, Charrity, and Humanity of them; I muſt beg the favour, to ſtate in a few words the matter of Surrenders of Chaters, the foundation whereupon this Fabrick was to be Erected.

The beginning of that Humour, for ſo I muſt call it, was upon the clearing up of very unquiet and dangerous Times; I mean, after my Lord *Shaftsbury* left *England*, and all thoſe Deſigns he was Embarqu'd in, began to be laid open and fruſtrated: then it was that a Warmth, and Spirit in the more indifferent ſort of Men, began to appear in favour of the Monarchy, and Government. And, as naturally Men love to expreſs their good will, ſo in that time they were ſtrangely inclined, to declare their Duty, and Affection to the Government, by Addreſſes; this produced a Reciprocation on the other ſide; ſo as thoſe that were then at the Helm, deſired very much to gratifie thoſe Men with any Favour, or Countenance that the Government could ſhew; and nothing of Markets, Fairs or the like Advantages could be asked, but were readily granted. And divers of the Nobility, and moſt of the conſiderable Gentry were pleaſed to join themſelves with Corporations in theſe matters, and were their Mediators above, in the procuring them what Advantages they deſired. This produced the renewing of very many Charters, whereby the Revenues, and Priviledges of the Towns were greatly Enlarged, and theſe wanted not thoſe, who were ready, and deſirous to oblige them in eaſing the Charge, And thus the Government was gratified by an Opportunity to countenance Friends, and the Towns had their Account in Revenues and Priviledges.

Afterwards, when the Caſe of *London* had put the Government to a ſtand, and there was a publick and avowed ſtop put to the courſe of Juſtice there; and it became neceſſary, if poſſible, to remove that grievance; the King found no Method ſo proper, and juſtifiable, as that of the Law; and reſolved to proceed accordingly. And thereupon a Proceſs of *Quo Warranto* was ſent out againſt the City, and Crimes of forfeiture Aſſigned, the

the fact of which was not denied, but the Law diſputed, and at laſt Judgment was given for the King.

Then it was not long before theſe reaſonable proceedings, by unreaſonable, and forward Men, began by degrees to be drawn into Abuſe, and at laſt to be an Intolerable Grievance. For great Men valued themſelves at Court upon bringing in of Charters, and uſed, I ſhould ſay Abuſed, the King's Proceſs of *Quo Warranto*, now fortified by the Judgment againſt *London*, to aſſiſt them in it. It cannot be expected that ſuch people as live in Corporations ſhould have the Vertue, and Courage of *Cato's*, to withſtand the Attacks of Powers, at the peril of their own Quiet, and Fortunes; and they yet were generally quiet and good Men, and ſuch as conformed to the eſtabliſh'd Laws, and Government in Church, and State. And choſe to die rather in compliance with, than oppoſitions to their Superiors. If when theſe Men were tempted with Promiſes, Threats, and preſent benefits to their Town, and by Men of Credit in the Country, as well as Power at Court; when they thought it was a vain thing to contend; it is no wonder that they were over perſuaded, to Renew, and accordingly conſented as was lawful for them to do, in a mattter of common Intereſt.

Thus far the Citizens and Inhabitants of Corpotions, who dream'd not of the Inconveniences of theſe proceedings, are excuſable; what ever may be ſaid of thoſe, who wrought upon them; And I may confidently affirm, that this Caſe is ſo general, that moſt of the ſubſtantial, reputable, and conformable people in Cities, and Towns all over *England*, are concerned. Nay many of the Nobility, as Stewards, and Recorders, as well as moſt of the conſiderable Gentry in *England*, who were Members or Friends of Corporations, will be found in the ſame Circumſtance.

There.

There is but one degree more, and that is Superlative. I mean ſuch who projected the modelling of Corporations, to influence Elections of Members to Parliament; and ſent *Itinerant* Regulators all over *England*, to tamper with the Inhabitants, and either to find out Men of themſelves diſpoſed, or who might be perſuaded to ſerve turns; and accordingly to place, and diſplace them under the Power reſerved in new Charters. And to theſe I muſt add the Regulators themſelves, and ſuch as complied with them, and were therefore put into Offices in Corporations, and to ſhew their Inclinations, acted without being qualified by Law. I cannot ſay much for theſe, but I hope a great many were deceived and miſtaken; and ſo far they are to be conſidered, but certainly without ſuch allowance, they have a great deal to anſwer for.

Now, Sir, I have preſented you with three Orders of Perſons concerned in Surrenders. The firſt were Benefactors to their Towns. The ſecond well meaning, and honeſt, as well as able Men, but miſtaken. The laſt are the worſt, eſpecially thoſe who underſtood the Intrigue, which was then open enough. Theſe are but an handful compared with the multitudes of others, who either judged, and did as they ought, or elſe were innocently miſtaken. And to do them right, I muſt needs ſay, they deſerve Praiſes, rather than Reproach or Puniſhment. For when that Flood of Regulators came upon Corporations, and all tending to the ſubverſion of the Eſtabliſh'd Laws, they chiefly, if not onely, were the Men who bore the brunt, ſtood out, and were diſplac'd, with all poſſible diſcountenance. Which ſhews as ſoon as they ſaw the evil, they avoided it, and bore the Inconveniences with reſolution, while others, that ſhall be nameleſs, yielded, and were preferred to the Magiſtracy.

Here

Here you have a State of the Persons, who had been concerned in this new Law, if it had past; and I believe you will judge, as I think them, to comprehend much the Major part of Substantial and Conformable Men in the Kingdom; especially such Parts as are most concerned in Elections to Parliament, and now I hope you are prepared to consider the subject matter of these Corporation Clauses.

The Clause offered by Mr. ------- to be added to the Bill for restoring Corporations, admitted upon the ----- of *January.* $16\frac{89}{90}$. and enacted the ------ after

Quære whether Mr. *Sacheverel.*

And Whereas it is necessary for the sake of Publick Justice, and securing the Government for the future, that such open attempts upon the Constitution, and so notorious violations of Oaths, and Trusts, should not go unpunished; lest hereafter ill Men might be encouraged to the like guilt, in hopes to come off with Impunity, though they should fail of success. Preamble

Be it Enacted by the Authority aforesaid, that every Mayor, Recorder, Alderman, Steward, Sheriff, Common-Council man, Town-Clerk, Magistrate, or Officer; who did take upon him to consent to, or joyn in, any such Surrender, or Instrument purporting such Surrender as aforesaid. Or did solicit, procure, prosecute, or did pay or contribute, to the charge of prosecuting any Scire facias, Quo warranto, *or Information in the nature of* Quo Warranto, *by this Act declared void, shall be, and is declared, adjudged, and Enacted to be for the space of seven years uncapable, and disabled to all Intents, and purposes to bear, or execute any Office, Imployment,* Enacting part. Persons offending Penalty

or place of Truſt, as a Member of ſuch reſpective Body Corporate, or in or for ſuch reſpective City, Town, Burg, or Cinque port, whereof, or wherein he was a Member, at, or before the time of making ſuch Surrender, or Inſtrument purporting ſuch Surrender, or the ſuing out, or proſecuting ſuch Scire facias, Quo warranto, *or Information in nature of* Quo warranto, *any thing in this Act contained, or any other Caſe, Statute, or any Ordinance, Charter, Cuſtom, or thing to the contrary in any wiſe notwithſtanding.*

After you have peruſed this firſt Clauſe: I deſire you will conſider, firſt the Deſign, ſecondly the Prudence, and laſtly the Juſtice of it. As for the Deſign, it is manifeſtly no other than to render all thoſe Men, who were any way concurring in the renewals of Charters, incapable of either being choſen to ſerve in Parliament for Cities or Burroughs, or of being ſo much as concerned in the management of Parliamentary Elections and Returns; what theſe Men are I have hinted, *viz.* the generality of the Eminent Inhabitants of Corporations, and Neigbouring Gentlemen, and to uſe a known denomination, the whole Church of *England* Party. For ſuch they generally were, who conſented to Surrenders, and yet oppoſed the torrent of Regulations, and their ſcandalous attempts to corrupt Elections, with a Zeal and Firmneſs becoming *Engliſh-men.* And how general a caſe this is, I muſt leave you to judge.

Then on the other ſide, the whole buſineſs of Elections in Corporations, muſt in conſequence devolve upon thoſe, who have continually oppos'd themſelves to the former, in all inſtances of publick buſineſs, that

that is, ſuch as have been ever uneaſie under, and perpetually tampering to alter the Eſtabliſhed Laws and Government, both in Church and State; and want that eaſie and conformable temper the others have; and are generally known by the name of Diſſenters. Theſe will be the only qualifyed Perſons to ſerve in Parliament for Cities, and Towns, (who ſend four times as many as the Counties,) and to manage, and judge the Elections of others; and make returns as they ſhall think fit. So that by this one ſtroak, if it had prevailed, all the Corporations in *England*, and their Intereſt in Parliament, had been regulated into the hands of one Party of Men; and then conſidering, firſt, the Power that Magiſtrates have in the conduct of Elections, by notice, time, place, countenance, and the like; and to return whom they pleaſe, whoever is choſen: And then next, the courſe of determining diſputed Elections above, all which that Party underſtand full well; it is eaſie from the complexion of the firſt returns, to calculate the temper, and ſucceſſes of a future Parliament; in caſe it were choſen and return'd under the Diſpenſation of this Law. Now I muſt refer it to your judgment, whether all thoſe violations and attempts, which the Preamble reproves, and pretends to reform, be not out-done, and the Perſons that the Regulators were ſent to diſcover, found out by this very Clauſe; ſo ſtrangely will Extremes ſometimes meet: That this was the only Deſign will appear from many Conſiderations.

1. There is no ſort of harmony nor proportion between the Preamble and the Enacting Part; you obſerve what a tragical and fierce ſtrain the former

is in, ratling together the high terms of Publick Juſtice, Government, Violations, Oaths, &c. Whereby one wou'd imagin either an High Court of Juſtice, to find out, and puniſh ſuch enormous Offenders, or elſe ſome new declaratory Law, with the ſevereſt penalties were coming out. *Quid proferet dignum tanto promiſſor hiatu?* Then the Enacting Part is only, that a Party of Men ſhall not be Mayors, &c. of Towns for ſeven years. This I confeſs is a new and ſtrange puniſhment, but ſcarce equal to the Thunder of the Preamble; therefore we muſt believe the former is but a gloſs, or varniſh to ſet off the other, which would not go down without ſome fair and popular pretence.

2. That which the Preamble moſt plauſibly pretends, is in no ſort provided by the Law, that is a Reformation of the abuſe, and preventing of the like for the future; for it contains neither a Declaration of the Law, nor ſo much as a Prohibition, whereby conſenting to Surrenders for the future may be adjudged unlawful, and puniſh'd as it deſerves; but Men may offend on to the end of the Chapter, and have nothing to fear, but ſuch another Act of Parliament as this, and how terrible a conſideration that would be, I leave you to judge. Therefore it is plain even to Demonſtration, that the regulation of the abuſe pretended by the Preamble, was not the aim of this Law, but ſomewhat elſe.

3. There is no mark ſet upon thoſe who were indeed the great Criminals: I mean Regulators, and ſuch as by force, and fraud extorted Charters, and Surrenders from Corporations, without the free conſent

ſent of the body; who indeed do deſerve animadverſion: Nor on the other ſide any conſideration of thoſe, who either actually did great ſervice to the Towns, or thought they did, and were miſtaken; but all that conſented, which includes almoſt all the then active Members, and thoſe that ſolicited or procured, which takes in the Nobility and Gentry, who were Stewards, Recorders, &c. all theſe without reſpect or diſtinction, are laid under a Diſability *Nullo diſcrimine*; which conſideration makes it plain, that a Party of Men were to be ſhut out, and another Party brought into Offices; and ſo into the Parliament: And ſince they could not expect to prevail in a bare fac'd Deſcription, or Character; they muſt find a diſguiſe, ſuch as might ſeem to look another way, be Taking, and truly diſtinguiſh the ſeveral Parties: Which no Character could better accompliſh, then this of Conſenters, and Non-Conſenters to Surrenders of Charters.

Next to obſerve the Prudence of this deſirable Law, let it be allowed for diſcourſe ſake, that the intent was ſincerely no other than is pretended, to diſcountenance Surrenders, you will ſee the admirable policy of it, with reſpect to the publick.

1. It revives a troubleſom and ſcandalous Faction, which had formerly divided moſt great Towns, and almoſt the whole Kingdom, which time and common dangers had almoſt laid aſleep; for what can ſuch a diſtinguiſhing Character produce, as Conſenter, and Non Conſenter; but the perfection of Whig and Tory? It muſt needs be very productive of Rancour, Malice, and all Uncharitableneſs; for when one Party

is

is to be erected, and another depreſſed, and diſgraced, and not be permitted to live together in the equal enjoyment of the known Laws, if all the Miſchiefs of Faction, Tumult, and Diſcontent follow, it is not to be wondered at.

3. And it cannot fail to be ſo in this Caſe. For the diſtinction of Conſenter and Non-Conſenter is to come in play at Elections of Members of Parliament, and Magiſtrates for Corporations, when the People are heated, and moſt apt to be irregular. And if any ſpightful petulant Fellow (of which ſort there is never any ſcarcity) will but object to another, that he is a Conſenter, with deſign to oppoſe his Election; there is no means to clear the point, and the ſtouteſt Fiſts and Shoulders, if not worſe Weapons, muſt carry it, which will make mad work in Corporations, eſpecially ſuch as act popularly.

Then next conſider the Juſtice of this Clauſe, with reſpect to Equity, and the *Courſe of Law*; whereby you will plainly ſee, that all the Abſurdities and Iniquity in Nature muſt be ſwallowed, to make way for the ſetting up a Party; and it will appear, that there is ſcarce a common Principle of Legiſlature, that is not contradicted by this Law.

As 1. Men are condemned without Tryal, or Conviction; but having ever conſented to a Surrender, without more, ſtand diſabled. Some Acts of Parliament have diſabled perſons upon the offence done, but only as to Offices then in poſſeſſion, becauſe they cannot be removed without the liberty to try the Fact upon which the Diſability depends in defence of their Poſſeſſion.

Poſſeſſion. This is the Caſe of all our *ipſo facto* Avoidances, and upon the Statute, 25. *Car.* 2. for a Teſt againſt Popiſh Recuſants, and divers other Laws. But there never was a Law yet, that I am adviſed of, to diſable Men in general, as to all Offices not in poſſeſſion, without a Conviction antecedent. The Reaſon is, that it would be impoſſible ever to know when we had a good Officer, and when not. And the Validity of their Acts upon which the Subjects Titles often depend, would lie under uncertainties. A Conviction upon Record is a determinate thing, and incontrovertible; therefore in ſuch Caſe, the Laws are to run——and being thereof convicted——ſhall ſtand diſabled, *&c.* But as this Clauſe is, Mankind muſt be endued with an extraordinary intuitive, or rather Prophetick Faculty, to know whether hereafter it may not appear, or be proved, that any perſon whatever at ſome time or other conſented to a Surrender. And then down fall his Acts, eſpecially ſuch as are Judicial, into Nullities.

The Puniſhment is inflicted for doing what was then, and is ſtill lawful; that is the bare conſenting to a Surrender: it would be an admirable Secret in the Law, if it could be made out, that Men ſhall be bound to give a Judgment by way of Vote, in a matter of common Intereſt, and doing it according to their Conſciences, ſhall become Criminal. By this Rule it will be dangerous to vote at Elections for Members of Parliament, Choice of Magiſtrates, or indeed to vote in the Parliament it ſelf. If it ſhall be ſaid afterwards, that it was done corruptly, and to a bad end: and therefore ſhall be a Character to draw a puniſhment. Surely People muſt ſleep, that do not think of this; but however it will not be denied, that Conſenting might poſſibly be innocent

innocent in ſome Men, and I affirm it was in multitudes, and of the beſt account. Then I would ask firſt, why is the bare Conſent made criminal, without a previous Judgment, whether it were given with a good mind, or a bad mind? Then why the good and the bad are involved in the ſame Condemnation without diſtinction? *Et eris Apollo.* But after all, I have heard, and take it for Law, that Fraud is not to be aſſigned in lawful Acts. Therefore whether done with good or bad intent, is not material, unleſs the Fact be unlawful.

3. Men are condemned in the Legiſlative Way by Retroſpection, that is, what Men acted lawfully ſeven years ago, is by this Clauſe now become unlawful, and puniſhed by an Act of Parliament, *Ex poſt.* ſo that if this method comes in faſhion, Men muſt not regulate their Actions by the Laws now in force, not expect to be juſtified by them, but by thoſe which are to be made ſeven years after; and ſo the Laws, inſtead of a Rule, and a Security, will be made a Snare; and it will be unreaſonable to expect, that Men ſhould rely upon any other Security, than Combinations of Force, for ordinary Protection; which ſeems to lay the Ax to the Root, and to ſubvert all Law and Government whatever. This is plainly done in this Clauſe; for if Men acted unlawfully, proſecute them by Law, now it is open, and purely adminiſtred. If they acted lawfully, why muſt a Law be made for the Nonce, to diſable and diſgrace them.

The

The Clauſe brought in by Sir ___ upon the ſame day, and rejected, &c.

Quære whether not Sir *Robert Howard.*

And be it further Enacted by the Authority aforeſaid, that if any perſon hereby enacted, and declared to be incapable, and diſabled to bear, or execute any ſuch Office, Imployment, or Place of Truſt as aforeſaid, ſhall at any time after the twenty fifth day of March, 1690, *take upon him to bear, or execute any ſuch Office, Imployment, or place of Truſt, as aforeſaid, every ſuch perſon ſhall forfeit the Sum of five hundred pounds, to be recovered by any Member or Inhabitant of the reſpective Body Corporate, City, Town, Burrough, Cinque-Port, who ſhall ſue for the ſame, by Action of Debt, Bill or Plaint in any of their Majeſties Courts of Record at* Weſtminſter; *wherein no Eſſoin, Protection, Privilege, or Wager of Law, or more than one Imparlance, ſhall be allowed. And alſo upon Verdict found, or Judgment given by confeſſion, or otherwiſe in ſuch Action againſt the Defendant, the ſaid Defendant ſhall be for ever incapable to bear or execute any Office or Place of Truſt whatſoever within this Kingdom of* England, *or Dominion of* Wales.

Perſons diſabled acting.

Time.

Five hundred pounds forfeit.

Remedy.

Farther Diſability.

Provided alſo, and be it Enacted, that a former Action depending ſhall be no Plea for the Defendant in any Action to be brought upon this Statute, if ſuch former Action hath depended by the ſpace of three Terms; nor ſhall a Non ſuit of the Plaintiff, or a Judgment for the Defendant in any former Action, be a Bar to the Plaintiff, in any Action to be brought upon this Statute.

Proviſion againſt fraudulent Actions.

This Clauſe is to inforce the former with a Penalty of five hundred pounds, &c. I obſerve,

1. That neither the King, nor the Poor have any ſhare; the King muſt needs be excluded, elſe general or particular pardons might extend to diſcharge ſuch as ſhould be ſo unhappy to fall under queſtion, as very many of neceſſity muſt; and ſo Suits and Animoſities between Neighbors, upon Factious Matters be determined; and after ſo little Charity, it is no wonder the Poor are left out.

2. Only a Member, or Inhabitant of the Corporation ſhall have the Action. It had been better for the Remedy, if any Man might have ſued as Informer; but the Quarrel muſt be within the Town, to keep up a Faction and Spirit amongſt them, which is much more advanced, when Law-Suits are ſtirred between Neighbor and Neighbor, than when between Neighbor and Stranger; for then the People will not be divided, but all take their Neighbor's part.

3. The moſt reaſonable Privilege, that the Law gives Defendants by pleading *Anter foits Acquit*, that is, a Verdict for him in a former Suit, to bar a new Action for the ſame Cauſe, is here taken away: ſo that a Man can never know his Peace. For forty may ſue him one after another, and he is not diſcharged by thirty nine Verdicts, but if the fortieth nicks a Conjuncture, he is gone; *& ſic ad infinitum.* And we know how accidental ſuch Suits are, in mutable times: therefore it is barbarous, not to allow a Man the Benefit of a Verdict, as in other Caſes. This, I muſt confeſs, is a thumping Condition of a Penalty, and if any Man ſhall but peep

peep out, being a ſuſpected Conſenter, let him beware, here is the Rod, be wiſe, and go home again: for at one time or other he will repent it. If this will not clear the Coaſt of Conſenters, I know not what will.

4. The Diſability as to all Offices, doth not attach without Conviction, which reproves the former Clauſe ſufficiently; for I would fain know what makes the Difference, why a man ſhall be diſabled, as to all Offices in a particular Corporation, but not as to all Offices in *England*. I will agree, the Miſchief in the latter Caſe is greater, but the Reaſon is the ſame in both.

Now, Sir, I believe you will wonder, that a Clauſe ſhould be penned, with ſo many open and groſs Objections as theſe are; the only Account I can give of it is, that the Deſign of excluding the Church of *England* Party out of Parliaments for ſeven years, until the Nation ſhall be ſettled upon new, and, as ſome fancy, better Principles, could not be dreſſed up with leſs Inconvenience. For it muſt not appear bare faced, and the moſt plauſible pretence muſt be made uſe of, that is, Charters. After that word, it was thought nothing would ſtick. I muſt agree, that the Clauſe is appoſite, and cunning enough for the purpoſe; becauſe if all men muſt be indicted, and tryed, or actual Penalties inflicted, as in Caſes of common Offenders againſt the Laws; This Caſe (granting it to be, as it is not, criminal) is ſo general, that ſuch a Proceeding would prove an Inquiſition, as inſupportable to the Nation, as that of *Goa*. Therefore ſuch a Courſe was impracticable; but a ſilent Diſability inflicted by the Legiſlative, under a general Character, without the trouble of hearing particulars, calls no man out of his Houſe,

but leaves Men to be convicted by their own conſciences, in which caſe, it was to be preſumed, they would not dare to appear and Act in Offices: And they are given to underſtand by the next Clauſe (of which anon) that if they are peccant, woe be to them. And thus ſo great, and important a part of the Nation, muſt be dar'd out of publick Truſts, like Larks under a Hobby. I ſuppoſe by this time you are fully ſatisfied of the Deſign, and Miſchiefs accumulated in this Clauſe. I have been the longer upon it, becauſe it is the Foundation, and body of the Project, and there will be leſs occaſion to trouble you [illegible] on the reſt.

The Proviſo brought in together with the ſecond Clauſe and Rejected.

Exemption if the Majority agreed.

Provided always, that no Alderman, or Common Council-Man, who after the laſt day of Michaelmas *Term, in the year of our Lord* 1683. *did conſent to, or joyn in any ſuch Surrender, or Inſtrument purporting ſuch Surrender as aforeſaid, to which Surrender, or Inſtrument the greater number of the Members of ſuch reſpective Corporation, or of the Common Council-Men of the ſame, did agree at the time of making thereof, ſhall for, or by reaſon of the ſame, be lyable to the diſability or incapacity aforeſaid.*

Evidence of the Majority.

And it is further Enacted, that no Inſtrument, or Surrender, or Inrolment on record thereof, or Act of Common Council, or Entry in the Books of the reſpective Corporation, ſhall be allowed for Evidence, to prove that the greater number of the Members of ſuch reſpective Corporation, or of the Common Council-Men of the

the ſame, did agree to ſuch Surrender, or Inſtrument.

This is Calculated to anſwer ſome Objections; for if the firſt Clauſe had ſtood in full force, very many Corporations, where the Surrenders were made by almoſt common Conſent, would ſtand diſſolved, for want of Members. Now Sir, I would beg of you, to admire the depth of this wiſe Proviſion.

1. Men are not to be excuſed, or puniſhed upon the merits of their own Actions, but according as it happens others agree with them or not. For by this proviſion, if the moſt execrable practice draws the Majority, and the moſt Innocent opinion wants it, the former is right, and goes clear, this is condemned and puniſh'd. Admirable ſtroke of Legiſlature!

2. They were in a bad caſe that ſpoke firſt, becauſe they run the venture of the Majority; thoſe that came after, eſpecially at the latter end of Voting, might be complaiſant with their Votes, and have nothing to anſwer for: The moſt unhappy of all, are thoſe that were ſtreight-lac'd in Judgment, and could not deviate from their own ſenſe in voting, whatever other Men thought. Theſe excellent Notions riſe out of this Proviſo, it is pity they ſhould be loſt.

3. But the perfection of all is, that here Men are allow'd the privilege of a Majority, but denyed the only means that can clearly prove it; a neat way of ſeeming to do ſomthing, but in truth nothing.

For

For Books, Papers, Records, *viz.* written Evidences, muſt not be admitted to prove this Majority. Now if I might, without offence, ask the Penner of this Proviſo a plain Queſtion, it ſhould be this, how his Worſhip thinks Accounts can be made out without Writing? If ſuch things depended upon the Teſtimony of willing Swearers, Merchants would be good Clients to the Lawyers, and never be without right on both ſides. It muſt be agreed that Polls though among a few, are ſeldom taken without written Notes, and in greater Aſſemblies, it cannot well be done otherwiſe; and Men who continue telling to the end immediatly write the Sum, and will not truſt their memories a moment with it, if they can help it; ſuch a ſlippery thing is a Number: then how can Majorities be proved by Memory, or otherwiſe, than by written Evidence? If it be pretended Books, and Notes are falſe, it were reaſonable to require reaſonable proof to ſupport them; but the Excluſion of them from being Evidence at all, is moſt unaccountable, and muſt needs produce Perjury in abundance.

Now Sir to conclude your trouble: I think I have expoſed the wretchedneſs of theſe Clauſes; it is poſſible, I may not have touch'd all particulars, ſo exquiſitely as the matters would bear; but you will obſerve many Defects, it may be, Miſtakes, but it is your part now to excuſe them; ſeeing it was your Commands, and not my own Inclination, that led me to theſe Obſervations; and therefore I tender them to your acceptance, only as a Teſtimony that I am moſt ſincerely, *&c.*

FINIS.

ERRATA.

P. 7. l. 16. for *die* read *err.* p. 14. l. 19. for *Caſe* read *Law.*